

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION

Fred L. Billiter, Jr.,

Plaintiff,

v.

John Wheeler, et al.,

Case No. 2:19-cv-1871

Related Case 2:19-cv-715

Defendants.

ORDER

Plaintiff Fred L. Billiter, Jr., a pro se prisoner currently incarcerated at Noble Correctional Institution, filed the instant action pursuant to 42 U.S.C. §1983 against Craig Aufdemkampe, John Richards, and John Wheeler, alleging that they retaliated against him in violation of his First Amendment rights. On August 9, 2019, defendants filed a motion to dismiss, alleging that plaintiff had not exhausted his administrative remedies, and arguing that his complaint failed to state a claim for relief. The magistrate judge gave notice to the parties that the court would convert the failure to exhaust branch of defendants' motion to dismiss to a motion for summary judgment. On January 28, 2020, the magistrate judge issued a report and recommendation recommending that the defendants' motions be denied.

The order advised the parties that the failure to file objections to the report and recommendation within fourteen days would result in a waiver of the right to have the district judge review the report and recommendation de novo, and would operate as a waiver of the right to appeal the decision of the district court adopting the report and recommendation. The time period for filing objections has expired, and no objections have been filed to the report and recommendation.

The court agrees with the recommendation of the magistrate judge, and hereby adopts the report and recommendation (Doc. 28). Defendants' motion for summary judgment and motion to dismiss (Doc. 13) are denied. The motion to strike (Doc. 21) is denied as moot.

Date: March 5, 2020

s/James L. Graham  
James L. Graham  
United States District Judge